226 F.3d 1

United States Court of Appeals
For the First Circuit

No. 00-1084

ROBERT W. MANGIERI,
Plaintiff, Appellant,

v.

PAUL MANGIERI, AS EXECUTOR OF
THE ESTATE OF JOSEPH F. MANGIERI,
Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

[Hon. Robert E. Keeton, U.S. District Judge]

Before

Torruella, Chief Judge,
Wallace, [1] Senior Circuit Judge,
and Lipez, Circuit Judge.

Peter D. Prevett for appellant.
Pamela E. Terry, with whom Forman, Terry, Hickey & Garrahan L.L.P. was on brief, for appellee.

September 11, 2000

TORRUELLA, Chief Judge. This case arises from a will contest between plaintiff-appellant Robert W. Mangieri and defendant-appellee Paul Mangieri, who are, respectively, the only son and a nephew of the now deceased Joseph F. Mangieri. The case was filed on August 31, 1999. The complaint alleges two claims: first, a claim under Massachusetts General Laws Chapter 191 § 20, the omitted child statute; and second, a breach of fiduciary duty claim against appellee Paul Mangieri based on his actions as executor of the estate of Joseph W. Mangieri. The district court granted summary judgment for appellee on November 4, 1999. For the reasons stated below, we affirm.

The essential facts are as follows: On November 2, 1984, Joseph F. Mangieri executed a will in which he divided his estate between his brothers, Robert L. and Sal Mangieri, his sister-in-law, Josephine Mangieri, and other beneficiaries. The 1984 will contained a clause stating that any children not provided for in the will were intentionally omitted from the will. The 1984 will made no provision for decedent's son, Robert W. Mangieri. On February 12, 1987, Joseph executed a second will. The 1987 will did not make any provision for Robert; however, in contrast to the 1984 will, it did not expressly state that this omission was intentional. The 1987 will left the entire estate to testator's nephew, Paul Mangieri. Paul Mangieri was also named executor of the 1987 will. On May 28, 1997, Joseph directed his attorney to draw up a new will, which, if executed, would have left the bulk of his estate to his son Robert. Joseph died on June 10, 1997 without having signed the new will.

A trial ensued in the Massachusetts Probate Court. On April 12, 1999, the probate court issued detailed findings of fact and conclusions of law. For our purposes, it is only relevant that (1) the court explicitly found that testator-decedent had deliberately left his son Robert out of the 1987 will, and (2) the court admitted the 1987 will to probate as the Last Will and Testament of the Decedent. Robert Mangieri neither filed a motion to amend the probate court's findings of fact nor appealed the court's judgment.

On August 31, 1999, appellant filed suit against Paul Mangieri, as executor of the estate of Joseph F. Mangieri, in the United States District Court for the District of Massachusetts. As indicated, the

complaint alleges (1) a claim under Massachusetts General Laws Chapter 191 s. 20, the omitted child statute, and (2) that Paul Mangieri committed a breach of his fiduciary duty as executor of Joseph F. Mangieri's estate by failing to consider Robert's claim as an omitted child and thus failing to protect Robert's interest as one of the testator's heirs. Appellant alleges that jurisdiction is proper pursuant to 28 U.S.C. s. 1332, the federal diversity of citizenship statute.

At the time appellant filed his complaint in federal court, he simultaneously filed a motion for an ex parte temporary restraining order. Following a hearing, the trial court denied the motion on September 2, 1999. After notice to opposing counsel was provided, the court held a second hearing on September 8, 1999. At that time, appellee filed a motion to dismiss, which the district court construed as a motion for summary judgment. Thereafter, on September 15th, appellant renewed his motion for a preliminary injunction. On November 4, 1999, the district court issued an order granting appellee's motion to dismiss, denying appellant's motion for preliminary injunction, and entering judgment for appellee, Paul Mangieri. The court reasoned, in part, that:

The core issues that require dismissal of this case in the view of this court are that (1) this court lacks authority to hear and resolve this case on the merits because this controversy is within the jurisdiction of the Probate Court of the Commonwealth of Massachusetts and that court has taken jurisdiction and issued findings and conclusions that preclude plaintiff's claim, and (2) this court either lacks jurisdiction . . . or in the exercise of discretion should not exercise jurisdiction to make any order that would be inconsistent with or otherwise impede completion of proceedings in that court before it has reached a final disposition. Mangieri v. Mangieri, No. 99-11812, slip op. at 7 (D. Mass. Nov. 4, 1999).

We believe that the district court's ruling in this case is amply supported by both the record and the law and needs little analysis. Under the probate exception to diversity jurisdiction, "a federal court may not probate a will, administer an estate, or entertain an action that would interfere with pending probate proceedings in a state court or with a state court's control of property in its custody." Ashton v. Josephine Bay Paul & C. Michael Paul Found., Inc., 918 F.2d 1065, 1071 (2d Cir. 1990) (citing Markham v. Allen, 326 U.S. 490, 494

(1946)). While "[t]he precise scope of the probate exception has not been clearly established," it is clear that "[a]s a general matter, courts tend to view the probate exception as extending to all suits 'ancillary' to the probate of a will." Georges v. Glick, 856 F.2d 971, 973 (7th Cir. 1988) (citing Dragan v. Miller, 679 F.2d 712, 715 (7th Cir. 1982)).

In this Circuit, we have previously stated:

It is obvious that insofar as the complaint requests the district court to order the defendants to turn over to the plaintiff property which they received in their capacity as fiduciaries, and for which they are accountable to the probate court, the federal district court had no jurisdiction. Kittredge v. Stevens, 126 F.2d 263, 266 (1st Cir. 1942). Against this background, it is clear that this case falls squarely within the probate exception to the diversity jurisdiction of the district court. First, appellant's claim is within the jurisdiction of the Massachusetts Probate Court. Second, as appellant concedes, the relief he requests would require the district court to set aside the ruling of the probate court that appellant Robert was deliberately omitted from the 1987 will and that the 1987 will must be admitted to probate as the Last Will and Testament of the Decedent. In fact, the complaint "demands that [the district court] find Plaintiff is an omitted child, is entitled to an intestate share of the testator-decedent, Joseph F. Mangieri's estate, and order Paul Mangieri, as executor, to distribute the estate accordingly."

In our view, the district court correctly declined to do so on the ground that this would improperly interfere with a probate proceeding currently pending before the Massachusetts State Probate Court. (2)

For the reasons stated, the decision of the district court is **affirmed**.

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(1). Of the Ninth Circuit, sitting by designation.

(2). In light of our conclusion that the probate exception to federal diversity jurisdiction applies to this case, we need not address the district court's alternative holding that abstention is proper pursuant to the Rooker-Feldman doctrine. See Mangieri, No. 99-11812, slip op. at 8 (citing District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983), and Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923)).

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action, File Number 99-CV-11812-REK

ROBERT W. MANGIERI,
PLAINTIFF

v.

PAUL MANGIERI, as executor of the estate of Joseph F. Mangieri,
DEFENDANT

Memorandum and Order
November 4, 1999

I. Pending Matters

Pending before this court are the following motions:

(1) Defendant's Motion to Dismiss (Docket No. 9, filed September 8, 1999) and Memorandum in Support Docket No. 16, filed September 22, 1999) and Plaintiff's Opposition (Docket No. 13 and 15, filed September 15, 1999);

(2) Plaintiff's Motion for Preliminary Injunction (Docket No. 11, filed September 15, 1999) and Defendant's opposition (Docket No. 17, filed September 22, 1999).

II. Factual and Procedural Background

This case arises from a will contest between the only son and a nephew of the now deceased Joseph F. Mangieri.

On April 12, 1999, after a trial on the issue of revocation and undue influence, the Probate Court in Barnstable, Massachusetts, of the Commonwealth of Massachusetts, issued an
Order that included findings of fact and conclusions of law regarding the contested last will and testament of Joseph F. Mangieri. I recite the relevant factual findings below for the purpose of context and background for this memorandum.

On February 12, 1987, Joseph F. Mangieri (hereinafter "Decedent") executed an instrument as his last will and testament that did not make any provision for his only child, Robert Mangieri (hereinafter "Robert") because of an apparently estranged relationship between father and son. The will left everything to the Decedent's nephew, Paul Mangieri (hereinafter "Paul"), and also named Paul as the executor.

In July of 1993, on the occasion of Paul's birthday, the Decedent visited him and gave him the original 1987 will along with a deed to a cemetery plot and a Weatherby rifle and rifle case. The Decedent told Paul and his wife Cathy that Paul was to inherit his entire estate. Paul testified that he put the will in his attic for safekeeping.

Between February of 1987 and May of 1997, the Decedent and his son, Robert, reconciled their relationship and on May 28, 1997, the Decedent instructed his attorney, Brooks Thayer at the law firm LaTanzi, Spaulding and Landreth to prepare a will naming his son as executor and leaving his entire estate to his son, his daughter-in-law, and his brother.

The Decedent died on June 10, 1997, without having executed the 1997 will.

Although the original 1987 will leaving everything to Paul could not be located upon the Decedent's death (the will's envelope was in Paul's attic, but it was empty), the probate court found that, contrary to Robert's assertions, the Decedent had not revoked his 1987 will.

The Probate Court also found that the Decedent had deliberately left Robert out of his 1987 will, providing a motive for Robert to destroy the will (and thus an explanation of its disappearance) if he had come upon it after his father's death.

On April 12, 1999, the Probate Court ordered that the photocopy of the Decedent's will dated February 12, 1987, that was kept in the Decedent's lawyer's office, shall be admitted to probate as

the Last Will and Testament of the Decedent and that a decree shall issue appointing Paul Mangieri as executor.

On August 31, 1999, Robert filed suit against Paul Mangieri, as executor of the estate of Joseph F. Mangieri, in this United States District Court for the District of Massachusetts alleging (1) a claim under Massachusetts General Laws, Chapter 191, Section 20, as an "omitted child"; and (2) that defendant committed a breach of his fiduciary duty as executor of Joseph F. Mangieri's estate by failing to consider the plaintiff's claim as an omitted child and thus by failing to protect plaintiff's interest as possibly one of the testator's heirs.

Immediately upon filing suit in this federal district court, Robert Mangieri filed a Motion for an Ex Parte Temporary Restraining Order (Docket No. 2, filed August 31, 1999) on which the court heard evidence and argument on September 2, 1999. On the basis of all the oral and filed submissions then before the court, and for reasons stated orally and summarized here, the court found: (a) that plaintiff had failed to show a likelihood of success on the merits of his contention that the absence of a clause in the 1987 will of Joseph F. Mangieri, that appeared in his 1984 will, manifested that his leaving his child Robert W. Mangieri of the 1987 will was not intentional, -- had railed to show that he is likely to succeed on his claim as an "omitted child" under Mass. Gen. Laws ch. 191, 20; (b) that plaintiff had failed to show irreparable harm that would warrant preliminary equitable relief; (c) that plaintiff had failed to show a balance of hardship that would support preliminary equitable relief; and (d) that plaintiff had failed to show that public interest would be better served by granting than by denying preliminary equitable relief. The court therefore denied the Motion for Ex Parte Temporary Restraining Order (Docket No. 2) and scheduled a time for hearing the motion for a temporary restraining order after appropriate notice.

The hearing after notice was convened on September 8, 1999. On the basis of all the oral and filed submissions and oral argument the court DISMISSED WITHOUT PREJUDICE the special defenses asserted in the defendant's Motion to Dismiss (Docket No. 9, filed September 8, 1999). The court deferred ruling on other aspects of the Motion to Dismiss and accepted the agreement of the parties to submit the case on the merits forthwith rather than going through a two-phase process of hearing, first on preliminary injunction and, second, at a later

time, a trial or hearing on the merits. Defendant orally moved for summary judgment, and the court, with consent of the parties, set a schedule for additional submissions by the parties on or before September 22, 1999. The additional submissions of the parties having been filed -- e.g., Plaintiff's renewed Motion for Preliminary Injunction (Docket No. 11, filed September 15, 1999), Plaintiff's Statement of Material Facts As To Which There Exists A Genuine Dispute (Docket No. 14), Plaintiff's Oppositions to Defendant's Motion for Summary Judgment (Docket No. 13 and ;5), Defendant's Memorandum of Law In Support of Motion for Summary Judgment (Docket No. 16) and Defendant's Opposition to Motion for Preliminary Injunction (Docket No. 17) -- the court now addresses the merits.

III. Defendant's Memorandum of Law in Support of Defendant's Motion for Summary Judgment asserts the following grounds for a Final Judgment dismissing this civil action:

> 1. To dismiss the action because the complaint fails to state a claim against the defendant upon which relief can be granted. The matter being res judicata on the issue of pretermitted child.
>
> 2. To dismiss the action or in lieu thereof to quash the return of service of the summons on the grounds that the defendant is a citizen of New York, was served in New York and was not and is not subject to service ofprocess within the District of Massachusetts.
>
> 3. To dismiss the action on the grounds that the court lacks jurisdiction because both the Plaintiff and the Defendant are citizens of the State of New York.
>
> 4. To dismiss the action on the grounds that the court lacks jurisdiction because the subject matter falls within the exclusive jurisdiction of the Probate Court in which the Estate was probated. See Ellis v. Stevens et al., 37 F. Supp. 488, 490-491 (D. Mass.] 1941), M.G.L.

ch. 215, 3 and M.G.L. ch. 191 15. Memorandum of Law in Support of Defendant's Motion for Summary Judgment (Docket No. 16, filed September 22, 1999) at 2-3.

Plaintiffs Motion in Opposition to Defendant's Motion for Summary Judgment (Docket No. 13, filed September 15, 1999) asserts that issues of fact that are material to the outcome of this case are genuinely in dispute. Plaintiff's Concise Statement of Material Facts As to Which There Exists a Genuine Dispute for Trial (Docket No. 14, filed September 15, 1999), filed to comply with Local Rule 56.1, lists the following allegedly disputed and material facts:

1. Whether the Plaintiff's Complaint alleges a viable cause of action against the Defendant on which relief can be granted.

2. Whether the doctrine of res judicata applies to the Plaintiff's current claims due to the Findings of Fact and Conclusions of Law set forth by the Barnstable County Probate Court.

3. Whether the service on the Defendant in New York state was insufficient ac a matter of law.

4 Whether the Defendant is subject to in personam jurisdiction in the District of Massachusetts due to his status as executor of the testator-decedent's Will.

5. Whether complete diversity of citizenship exists between the Plaintiff and Defendant so as to confer subject matter jurisdiction upon this Honorable Court.

6. Whether this Honorable Court is precluded from subject matter jurisdiction due to the exclusive jurisdiction of the Barnstable County Probate Court.

7. Whether the District Court should "abstain" from hearing the matter under the "domestic relations exception" to diversity or the "Burford Abstention Doctrine."

8. Whether the case of Ellis v. Stevens, et al., 37 F.Supp. 488 (D. Mass. 1941) precludes the Plaintiff from recovering. Docket No. 14 at 1-2.

The core issues that require dismissal of this case in the view of this court are that this court lacks authority to hear and resolve this case on the merits because this controversy is within the jurisdiction of the Probate Court of the Commonwealth of Massachusetts and that court has taken jurisdiction and issued findings and conclusions that preclude plaintiff's claim, and e this court either lacks jurisdiction (as the point is sometimes expressed) or in the exercise of discretion should not exercise jurisdiction to make any order that would be inconsistent with or otherwise impede completion of proceedings in that court before it has reached a final disposition.

In other words, in so far as plaintiff is asking this court to consider the merits of his claim as an "omitted child" under Mass. Gen. Laws ch. 191, 20, with regard to the probating of the will of Joseph F. Mangieri, that is a claim that is properly heard in the Probate Court of the Commonwealth of Massachusetts. See Mass. Gen. Laws 215, 3. See also Markham v. Allen, 326 U.S. 490, 494 (1946) (stating the by now axiomatic proposition that "the probate exception to federal diversity jurisdiction is a common law limitation which holds simply that a federal court has no jurisdiction to probate a will or administer an estate"); Kittredge v. Stevens, 126 F.2d 263, 266 (lst Cir.) cert. denied, 317 U.S. 642 (1942) (holding that, according to the Princess Lida Doctrine, a federal district court has no jurisdiction over a case which would involve the examination of the general administration of an estate by a state probate court).

And, if plaintiff is asking this court to review the Probate Court's decision for error in its finding that Robert was deliberately omitted from the 1987 will, that review must be by the Massachusetts Court of Appeals or by the Supreme Judicial Court of Massachusetts in accordance with Mass. Gen. Laws ch. 215, 9. See also Rooker v. Fidelity Trust Co., 263 U.S. 413, 483 & n. 16 (1923) (announcing the now-called "Rooker-Feldman" doctrine that a federal district court lacks appellate jurisdiction to review a state court judgment); District

of Columbia Court of AnDeals v. Feldman, 460 U.S. 462, 482-86 & n. 16 (1983) (reiterating the viability of the "Rooker-Feldman" doctrine that a federal district court lacks appellate jurisdiction to review a state court judgment and that such "impermissible appellate review may occur [even] when a district court is asked to entertain a claim that was not ... argued in the state court but is inextricably intertwined with the state court judgment"). The two claims presented here -- alleging a right of inheritance as an "omitted child" and a breach of fiduciary duty by the executor of the estate for a failure to consider the "omitted child" claim -- are sufficiently "intertwined" with the probate court proceedings so as to require state court appellate jurisdiction, not federal court jurisdiction. See Feldman, 460 U.S. at 483.

ORDER

For the foregoing reasons, it is ORDERED:

(1) Defendant's Motion to Dismiss (Docket No. 9, filed September 8, 1999) is ALLOWED;
(2) Plaintiff's Motion for Preliminary Injunction (Docket No. 11, filed September 15, 1999) is DENIED;
(3) The Clerk is directed to enter forthwith on a separate document a Final Judgment as follows:

For the reasons stated with the Memorandum of this date, it is Ordered:

Judgment for the defendant, Paul Mangieri.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action, File Number 99-CV-11812-REK

ROBERT W. MANGIERI,
PLAINTIFF

v.

PAUL MANGIERI, as executor of the estate of Joseph F. Mangieri,
DEFENDANT

Final Judgment

November 4, 1999

For the reasons stated with the Memorandum of this date, it is Ordered:

Judgment for the defendant, Paul Mangieri.

Approved:

/s/ Robert Keeton
United States District Judge

By the Court,

/s/ Craig Nicewicz
Craig Nicewicz, Deputy Clerk

STATUTES AND CONSTITUTIONAL PROVISIONS

U.S. Const., art. III

Section 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

28 U.S.C. Section 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C. Section 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between -

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be

adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title -

(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be

deemed to be a citizen only of the same State as the infant or incompetent.

(d) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

Mass. Gen. Laws Chapter 191: Section 20. Omitted children.

If a testator omits to provide in his will for any of his children, whether born before or after the testator's death, or for the issue of a deceased child, whether born before or after the testator's death, they shall take the same share of his estate which they would have taken if he had died intestate, unless they have been provided for by the testator in his lifetime or unless it appears that the omission was intentional and not occasioned by accident or mistake; provided, however, that no such child or issue shall take any share in any real property in the testator's estate unless a claim is filed in the registry of probate by or in behalf of such child or any of such issue within one year after the date of the approval of the bond of the executor.

Mass. Gen. Laws Chapter 215: Section 3. General provisions.

Probate courts shall have jurisdiction of probate of wills, of granting administration on the estates of persons who at the time of their decease were inhabitants of or residents in their respective counties and of persons who die out of the commonwealth leaving estate to be administered within their respective counties; of the appointment of guardians and conservators; of all matters relative to the estates of such deceased persons and wards; of petitions for the adoption of children, and for change of names; or proceedings transferred to it under the provisions of section four A of chapter two hundred and eleven; and of such other matters as have been or may be placed within their jurisdiction. Whenever service of any notice, summons, citation, order or other process in any of the foregoing proceedings is ordered to be made by publication the names of the estates or parties to such proceedings shall be printed in bold type.

Probate courts have exclusive original jurisdiction of actions for divorce or for affirming or annulling marriage.

Probate courts shall have exclusive original jurisdiction of all actions concerning the execution and validity of health care proxies created pursuant to chapter two hundred and one D or disputes arising thereunder.